

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

Empire Company, Inc.;

Luis Ayala Colón & Sucrs. Inc.;

Island Stevedoring, Inc.;

**International Shipping Agency d/b/a
Intership;**

Trailer Bridge, Inc.

Cases: 12-RC-152219

12-RC-152179

12-RC-152145

12-RC-152203

12-RC-152221

MOTION IN OPPOSITION TO DISMISS

TO THE REGIONAL DIRECTOR:

COMES NOW, petitioner, Unión Independiente de Empleados de Muelles de Puerto Rico y el Caribe, Inc., through the undersigned attorneys, and respectfully, allege, and request the following:

1. Incumbent Union presented a *Motion to Dismiss*. Therefore, we present this motion in opposition to dismiss and request the Board to not grant the incumbent union's request.

2. Former §101.16 states that the purpose of the showing of interest on the part of labor organizations and individual petitioners that initiate or seek to participate in a representation case is merely to determine whether there is sufficient employee interest in selecting, changing or decertifying a

representative to warrant the expenditure of the agency's time, effort, and resources in conducting an election.

3. As such, the purpose of the showing of interest is purely an administrative one; the size of the showing of interest in support of certification and decertification petitions that the Board currently requires is not compelled by the National Labor Relations Act.

4. A petitioner seeking certification as the collective-bargaining representative must supply, at the same time it files its petition, evidence of employment interest in an election ("showing of interest"). Such evidence is usually in the form of cards, which must be dated, authorizing the labor organization to represent the employees. The petitioner need not serve a copy of its showing of interest on any other party.

5. A proper showing of interest must include authorization cards or signatures from 30 percent of the employees in an appropriate unit. (§102.61) However, if a question of representation exists, it is resolved by a majority of valid votes cast in an election.

6. As such, the purpose of the showing of interest is purely an administrative one; the size of the showing of interest in support of certification and decertification petitions that the Board currently requires is not compelled by the Act. As an administrative matter is not litigable. *The Borden Co.*, 101 NLRB 203, 203 n.3 (1952) *Casehandling Manual Section 11028.3*.

7. According to the Casehandling Manual, Section 11021:

“The determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Agency and is not dispositive of whether a representation question exists. While any information offered by a party bearing on the validity and authenticity of the showing should be considered, no party has a right to litigate the subject, either directly or collaterally, including during any representation hearing that may be held. When presented with supporting evidence that gives the Regional Director reasonable cause to believe that the showing of interest may have been invalidated, the Regional Director should conduct a further administrative investigation.” Secs. 11028.3, 11029.4, 11184, and 11184.1; *Perdue Farms, Inc.* 328 NLRB 090 (1999).

8. The final rule does not change the Board’s longstanding policy of not permitting the adequacy of the showing of interest to be litigated. See, e.g. *Plains Cooperative Oil Mill*, 123 NLRB 1709, 1711 (1959) (“The Board has long held that the sufficiency of a petitioner’s showing of interest is an

administrative matter not subject to litigation.”; *O.D. Jennings & Co., 68 NLRB 516, 517-18 (1946)*

WHEREFORE, Petitioner respectfully requests the Board to not dismiss the five petitions and order the continuation of the proceedings.

CERTIFICATE OF SERVICE: I certify that I have notified copy of this brief to the legal representatives of the parties on record to:

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RESPECTFULLY SUBMITTED, In San Juan, Puerto Rico, this 16th day of
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